

UT 03-5

**Tax Type:** Use Tax

**Issue:** Use Tax On Out-Of-State Purchases Brought Into Illinois

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,**

**Taxpayer**

**Docket No. 00-ST-0000**

**IBT No.: 0000-0000**

**NTL: 000000000000000000**

**Charles E. McClellan**

**Administrative Law Judge**

---

---

**RECOMMENDATION FOR DECISION**

**Appearances:** George Foster, Special Assistant Attorney General, for the Illinois Department of Revenue (the “Department”); John Doe, *pro se*.

**Synopsis:**

This matter arose from a timely filed protest to a Notice of Tax Liability mailed to John Doe (the “Taxpayer”) on October 10, 2002 assessing use tax on artwork that the Taxpayer purchased. An evidentiary hearing was held on May 22, 2003.

I am recommending that the Notice of Tax Liability be made final.

**Findings of Fact:**

The Department issued a Notice of Tax Liability to the Taxpayer on October 10, 2002 assessing Illinois Use Tax<sup>1</sup> in the amount of \$286, plus penalty and interest for a total of \$344. Dept. Ex. No. 1.

1. The tax was assessed on artwork the Taxpayer purchased and had delivered to him at his place of business, ABC Lumber and Building Material Corp. located at Anywhere, Illinois. Tr. p. 4, Taxpayer Ex. No. 1.
2. The Taxpayer purchased the artwork for display at his vacation home in Utah but he had it shipped to his place of business because somebody would always be there to receive it, and that is not the case at his condominium in Utah. Tr. p. 4.
3. The taxpayer kept the artwork wrapped as delivered until he carried it with him on an airline trip to his condominium in Utah. *Id.*
4. **Conclusions of Law:** The issue in this case is whether the Taxpayer is liable under the UTA for tax assessed on artwork he purchased and had delivered to his place of business in Chicago, Illinois. The Taxpayer testified that he purchased the artwork for his condominium vacation home in Utah where he and his wife go skiing. He testified that he had the artwork delivered to his place of business because he knew somebody would be there to accept it. That would not be the case at the Utah location. The Taxpayer testified that the artwork remained wrapped until he personally carried it on an airplane and took it to his condominium in Utah. The Taxpayer argued that the artwork purchase should be exempt because it was stored in Illinois temporarily until he took it to Utah.

---

<sup>1</sup> Unless otherwise noted, all statutory references are to 35 ILCS 105/1, *et seq.*, the Illinois Use Tax Act. (UTA).

The assessment made by the Department is based on several sections of the UTA. The Act imposes a tax “upon the privilege of using in this State tangible personal property purchased at retail from a retailer . . .” 35 ILCS 105/3. "Purchase at retail" means the acquisition of the ownership of tangible personal property through a sale at retail. 35 ILCS 105/2. "Sale at retail" means any transfer of the ownership of tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale. *Id*

The UTA contains a number of provisions to avoid multistate taxation. 35 ILCS 105/3-55. The temporary storage exemption raised by the taxpayer is set forth in UTA § 3-55(e). That section provides an exemption for tangible personal property that is acquired outside of Illinois, is stored temporarily in Illinois, and is used solely outside Illinois. 35 ILCS 105/3-55(e), 86 IL. Admin. Code ch. 86, § 150.310(4).

The Department’s *prima facie* case is established at a hearing before the Department or any legal proceeding by the introduction into evidence of the Department’s records under the certificate of the Director. 35 ILCS 120/8<sup>2</sup> *Central Furniture Mart v. Johnson*, 157 Ill.App. 3d 907 (1st Dist. 1987); *Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 242 N.E.2d 205 (1968). Therefore, the Department’s *prima facie* case was established by the introduction of the Notice of Tax Liability under the certificate of the Director.

When a taxpayer claims that it is exempt from a particular tax, he has the burden of proof. This derives from the fact that exemptions are privileges created by statute as a

---

<sup>2</sup> The Use Tax Act makes numerous sections of the Retailers’ Occupation Tax Act (120 ILCS 120/1 *et seq.*) applicable to the Use Tax. 35 ILCS 105/12. One of the sections made applicable is 35 ILCS 120/8.

matter of legislative grace. Statutes granting such privileges are to be strictly construed in favor of taxation. *Balla v. Dept. of Revenue*, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

To overcome the Department's *prima facie* case, the taxpayer must present consistent, probable evidence identified with his books and records. *Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 157; 242 N.E.2d 205, 207 (1968); *Central Furniture Mart v. Johnson*, *supra*. Testimony alone is not enough. *Mel-Park Drugs, Inc. v. Department of Revenue*, 218 Ill.App.3d 203, 21; 577 N.E.2d 1278, 1287 (1st Dist. 1991), *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988), 86 Admin. Code ch. I, § 130.1405 (a). Documentary proof of tax-exempt status is required to prevail against an assessment of tax by the Department. *Sprague v. Johnson*, 195 Ill. App. 3d, 798, 804; 552 N.E.2d 436, 439 (4th Dist. 1990).

In this case, the Taxpayer's testimony was credible. However, he failed to introduce documentary evidence to prove that he is entitled to claim a temporary storage exemption. He offered no documentary evidence to show where or when he bought the artwork. He offered no documentary evidence to show how long the artwork was stored in Illinois; and he offered no documentary evidence to support his testimony that he carried the artwork to Utah on an airline.

The only documents that the Taxpayer offered into evidence were his business card, showing his business address in Chicago, and several photographs he identified as having been taken at his condominium in Utah. Two of the pictures show a framed document identified by the Taxpayer as the artwork in question. However, these documents do not support his argument that he is entitled to a temporary storage

exemption. These documents are not sufficient to overcome the Department's *prima facie* case.

Therefore, I recommend that the Notice of Tax Liability be made final.

Date: 7/17/2003

Charles E. McClellan  
Administrative Law Judge